

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

BRENT BLAGG as Personal
Representative for the Estate of Amy
Blagg, et al.,

Plaintiffs,

vs.

JERRY LINE, et al.,

Defendants.

Case No.09-CV-703-CVE-FHM

Consolidated for Pretrial Discovery
Purposes Only with:
09-CV-708-TCK-FHM
10-CV-502-GKF-FHM

OPINION AND ORDER

The Motion to Quash filed by the District Attorney for the 11th Judicial District of the State of Oklahoma [Dkt. 102] is before the undersigned United States Magistrate Judge for decision. Plaintiffs have filed a response brief. [Dkt. 107]. No reply brief was filed. The motion is ripe for determination.

The District Attorney seeks to quash a subpoena which seeks production of the entire investigative file of the Office of the District Attorney in and for Nowata county in an action entitled *State of Oklahoma v. Charles David Strong, Jr.*, No. CF-2009-77. The District Attorney asserts that the file is not discoverable under 51 Okla. Stat. § 24A.12, which states:

Except as otherwise provided by state or local law, . . . the
Office of the District Attorney of any County of the State . .
. may keep its litigation files and investigatory reports
confidential.

Discovery in this case is governed by the Federal Rules of Civil Procedure. Rule 26(b)(1) provides in relevant part:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . .

Notably, the District Attorney did not assert that the materials sought by the subpoena are privileged and did not cite any cases construing 51 Okla. Stat. § 24A.12 as precluding discovery of such materials in federal court. Plaintiff, however, did cite to cases where courts have determined that the cited provision does not preclude discovery of a prosecutor's file, *JM v. Hilldale Ind. School Dist No 1-29 of Muskogee County*, 2008 WL 1743489 (E.D. Okla. 2008) and *Seabolt v. City of Muskogee*, 2008 WL 2977865 (E.D. Okla. 2008), [Dkt. 107-2]. The District Attorney did not file a reply brief to attempt to distinguish these cases.

The undersigned is persuaded by the legal analysis contained in the *Seabolt* case cited above. The Motion to Quash filed by the District Attorney for the 11th Judicial District of the State of Oklahoma [Dkt. 102] is DENIED. The District Attorney is hereby ORDERED to comply with the terms of the subject subpoena forthwith.

SO ORDERED this 17th day of August, 2011.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE